

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. 03-370-KI
	)	
vs.	)	OPINION AND ORDER
	)	
MARSHALL C. RICHMOND,	)	
	)	
Defendant.	)	

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District of Oregon  
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P. O. Box 550  
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Pro Se Defendant

KING, Judge:

Before the court is petitioner Marshall Richmond's Motion for Appointment of Licensed Counsel to Assist Pro Se Litigant with his Submission of Title 28 U.S.C. § 2255 Petition to this Court (#208).

### DISCUSSION

Richmond seeks appointment of counsel to assist him with the § 2255 petition he filed pro se on August 30, 2006. In that petition, Richmond contends that he received ineffective assistance of counsel during the jury trial in which he was convicted. He also alleges other errors, such as the government's failure to produce *Brady* material.

The court may appoint counsel for a habeas petitioner if the court determines that the interests of justice so require. 18 U.S.C. § 3006A(a)(2)(B). Appointment of counsel is discretionary unless the court conducts an evidentiary hearing on the petition. Abdullah v. Norris, 18 F.3d 571, 573 (9th Cir.), cert. denied, 513 U.S. 857 (1994). If the petitioner has presented claims that are frivolous or clearly without merit, the court should dismiss the case on the merits without appointing counsel. If there is a nonfrivolous claim, the court should determine whether the appointment of counsel would benefit the petitioner and the court to such an extent that the interests of justice require the appointment. Factors considered in making this determination include the legal and factual complexity of the case and the petitioner's ability to investigate and present his claim. Id.

Richmond's claims, which are not frivolous, are not legally complex. Instead, the claims require a knowledge of the facts surrounding his conviction and the alibi defense he believes should have been brought before the jury. Richmond's moving papers show his understanding of the necessary facts and arguments and his eloquence in stating them. Appointed counsel would

not provide a benefit sufficient to make the interests of justice require the appointment.

Consequently, I deny his request for counsel.

### **CONCLUSION**

Richmond's Motion for Appointment of Licensed Counsel to Assist Pro Se Litigant with his Submission of Title 28 U.S.C. § 2255 Petition to this Court (#208) is denied.

IT IS SO ORDERED.

Dated this 28th day of September, 2006.

/s/ Garr M. King  
Garr M. King  
United States District Judge